Appendix

In the Court of Appeals
State of Arizona

Division One

1 CA-IC 2417

DEPARTMENT C

ICA Claim No. 449-44-2966

ANDREA CISNEROS JALIFI, widow,
Petitioner,

vs.

THE INDUSTRIAL COMMISSION OF ARIZONA,
Respondent,

DAN SKOUSEN dba SKOUSEN RANCH and/or SKOUSEN FARMS,
Respondent Employer.

ORDER

The above-entitled matter was duly submitted to the court. The court has this day rendered its opinion.

IT IS ORDERED that the opinion be filed by the clerk.

IT IS FURTHER ORDERED that a copy of this order, together with a copy of the opinion, be sent to each party appearing herein or the attorney for such party and to Donald H. Bayles, Administrative Law Judge.

DATED this 11th day of MARCH, 1982.

/s/ WILLIAM E. EUBANK
William E. Eubank, Presiding Judge
Department C

The foregoing directives were complied with on March 11, 1982, by mailing the required to:

Mr. Donald F. Schaar
Attorney at Law
814 West Roosevelt Street
Phoenix, Arizona 85007
and
Mr. J. Terence Fox
Attorney at Law
1616 West Adams Street
Phoenix, Arizona 85007
and
Mr. Lawrence Ollason
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182 North Court
Tucson, Arizona 85701
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The Honorable Donald H. Bayles
Administrative Law Judge
The Industrial Commission of Arizona
1601 West Jefferson Street
Phoenix, Arizona 85007

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1616 West Adams Street
Phoenix, Arizona 85007

GLEN D. CLARK, CLERK
By ! ! ! ! !
Chief Deputy Clerk

In the Court of Appeals
State of Arizona

Division One

1 CA-IC 2417

DEPARTMENT C

ANDREA CISNEROS JALIFI, widow,
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vs.

THE INDUSTRIAL COMMISSION OF ARIZONA,
Respondent,

DAN SKOUSEN dba SKOUSEN RANCH and/or SKOUSEN FARMS,
Respondent Employer.

OPINION

Special Action—Industrial Commission

ICA CLaim No. 449-44-2966

Administrative Law Judge Donald H. Bayles

AWARD AFFIRMED

Taylor & Kamper
By: Don F. Schaar
J. Terence Fox — Phoenix
and
Lawrence Ollason — Tucson
Attorneys for Petitioner

Calvin Harris, Chief Counsel
By: Jo Ann Gaffaney
Legal Counsel
Attorneys for Respondent
The Industrial Commission of Arizona — Phoenix

Jerome & Gibson, P.C.
By: Don A. Fendon
Attorneys for Respondent Employer Phoenix

FROEB, Judge

Miguel Jalifi died in an automobile accident arising out of and in the course of his employment on May 11, 1978. On August 13, 1979, Findings and Award for Death Benefits was entered granting petitioner Andrea Jalifi, his widow, full widow's benefits under Arizona's workmen's compensation law in the amount of $157.50 per month. Before it became final, the award was amended on October 9, 1979, reducing Andrea Jalifi's benefits to sixty percent of the full widow's allowance based upon the finding that she was an alien not residing in the United States at the time of her husband's death. Two of the deceased's three minor children pursued their rights to workmen's compensation benefits. Since the children have duality of citizenship, they were awarded full benefits pursuant to A.R.S. § 23-1046(A)(5).

A request for hearing was filed by the petitioner and, on April 8, 1980, the administrative law judge entered his Findings and Award affirming the Commission's amended October 9, 1979, decision. This decision was based upon memoranda which were filed by the petitioner and respondent-employer in lieu of a formal hearing. Petitioner then filed a request for review on April 22, 1980. The administrative law judge affirmed his decision by an award dated May 9, 1980, and this Special Action—Industrial Commission followed.

A.R.S. § 23-1046(A)(2) provides death benefits for the widow of a deceased worker in the amount of "thirty-five percent of the average wage of the deceased, . . ." Petitioner challenges the constitutionality of A.R.S. § 23-1046(C), which provides for a reduction of benefits in her case:

> A death benefit paid to an alien not residing in the United States shall be only sixty percent of the amount specified in this section.

Specifically, petitioner claims that A.R.S. § 23-1046(C) establishes an unconstitutional classification "on the basis of alienage" and thereby deprives her of the equal protection of the laws. She also claims a denial of procedural due process.[1]

It is clear that aliens within the jurisdiction of the state are entitled to the equal protection of the laws. *Mathew v. Diaz*, 426 U.S. 67, 96 S.Ct. 1883, 48 L.Ed.2d 478 (1976); *Yick Wo v. Hopkins*, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220 (1886). Furthermore, resident aliens enjoy the "heightened judicial solicitude of a suspect class." *Graham v. Richardson*, 403 U.S. 365, 91 S.Ct. 1848, 29 L.Ed.2d 534 (1971). This status is not afforded to *non-resident* aliens, however. *DeTenorio v. McGowan*, 510 F.2d 92 (5th Cir. 1975), U.S. *cert. den.* 423 U.S. 877, 96 S.Ct. 150, 46 L.Ed.2d 110 (1975); *Pedrazza v. Sid Fleming Contractor, Inc.*, 94 N.M. 59, 607 P.2d 597 (1980). The fourteenth amendment to the United States Constitution provides that "No state shall . . . deny to any person *within its jurisdiction* the equal protection of the laws." (Emphasis added.) As noted in *Johnson v. Eisentrager*, 339 U.S. 763, 70 S.Ct. 936, 94 L.Ed. 1255 (1950):

> [I]n extending constitutional protection beyond the citizenry, the Court has been at pains to point out that

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1. Petitioner originally argued that the amended award reducing her benefits was also a violation of the supremacy clause because she claimed she was a green-carded alien, and that under the Federal Immigration and Nationality Act, a green-card holder enjoys the status of a *resident* alien. 8 U.S.C. § 1101(a) (1976 & Supp. III 1980). *See* Gonzales v. Workmen's Compensation Appeals Board, 49 Cal.App.3rd 280, 122 Cal.Rptr. 515 (1975). At oral argument, however, petitioner considered that she was not in fact a green-card holder and therefore waived the supremacy clause argument.

> it was the alien's presence within its territorial jurisdiction that gave the Judiciary power to act.

339 U.S. at 771, 70 S.Ct. at 940, 94 L.Ed. at 1262.

The argument is raised by respondents that the equal protection does not apply to petitioner in this case. We need not decide this question, however, because we find that, even if we assume the equal protection clause applies, the statutory provision in question does not violate it.[2] We turn then to a consideration of the standard by which the statute in question should be reviewed.

Alien-based classification has historically been subject to strict scrutiny for purposes of equal protection analysis. *Graham v. Richardson*, *supra*; *Yick Wo v. Hopkins*, *supra*. However, review of the "alien" cases commencing with *Yick Wo*, *supra*, indicates that the underlying rationale of those decisions is that *resident* aliens, like citizens, "pay taxes, serve in the military and contribute to economic growth." *Lehndorff Geneva, Inc. v. Warren*, 74 Wis.2d 369, 246 N.W.2d 815 (1976). *See Johnson v. Eisentrager*, *supra*. Thus, since resident aliens share the burdens of society, the state has a heavy burden to bear when it deprives them of equal benefits. *In re Griffiths*, 413 U.S. 717, 93 S.Ct. 2851, 37 L.Ed.2d 910 (1973).

In *Lehndorff*, *supra*, the Wisconsin Supreme Court summarized the "alien" cases as follows:

> In summary, the cases which called for a "heightened judicial solicitude" toward aliens dealt with statutes which obstructed the normal affairs of life even though the national government had determined that the

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2. Unlike the non-resident aliens in *De Tenorio*, *supra*, and *Pedrazza*, *supra*, petitioner is conferred some benefits by the Arizona State Legislature, which may provide the requisite nexus to bring her within the purview of the equal protection clause. We therefore decline to dispose of the equal protection issue on the basis that its protection does not apply to petitioner.

> aliens in question could live in this country. As residents, these aliens bore the burdens imposed by society but not the sought-after benefits. Nor could they participate in the political process, which is the normal avenue of redress for a citizen unhappy with a governmentally-imposed burden. In this type of situation, the court repeatedly held, "heightened judicial solicitude" is appropriate.

Id. at 382-83, 246 N.W.2d at 822. The Wisconsin court determined, however, that none of these considerations applied to a state law limiting *non-resident* alien ownership of land. Because the non-resident aliens in that case did not share the burdens of citizens, except for taxes paid in connection with the ownership of the land, the court concluded that non-resident aliens did "not possess the characteristics which warrant heightened judicial solicitude. . . . " *Id.* at 387, 246 N.W.2d at 824.

We agree with this reasoning and find it applicable to the petitioner in the case before us. Petitioner was not a resident of the United States on the date of her husband's death. In fact, since her marriage to Miguel Jalifi, petitioner has always resided in Mexico. Petitioner therefore shares none of the "duties and burdens" which resident aliens have in common with citizens of the United States. Consequently, her challenge to A.R.S. § 23-1046(C) must be analyzed in accordance with the "rational basis" test and it is incumbent upon her to establish that the classification is arbitrary and cannot be justified under any reasonable set of facts. *U.S. v. Carolene Products Co.*, 304 U.S. 144, 58 S.Ct. 778, 82 L.E. 1234 (1938).

To determine whether A.R.S. § 23-1046(C) serves any legitimate state interest, it is necessary to consider the purposes of the Workmen's Compensation Act. The Act serves the economic and social welfare purposes of pre-

venting claimants and their dependents from becoming public charges during the period of disability. *Prigosin v. Industrial Commission*, 113 Ariz. 87, 546 P.2d 823 (1976). Thus, A.R.S. § 23-1046(C) reasonably distinguishes between resident aliens who without full benefits are more likely to become public charges, and aliens residing in foreign countries who probably will not. Anther reason which has been cited for the disparate treatment afforded non-resident aliens is "the well-known fact that the cost of living in most foreign countries is substantially less than in the United States. *Continental Casualty Co. v. Industrial Commission*, 63 Utah 334, 336, 250 P. 145, 145 (1926). Finally, as stated in Larson on *Workmen's Compensation Law*, "Most of the special rules [applying to non-resident alien dependents] are the result not of any desire to discriminate but of the awkward problem of proof and continuing administration that is unavoidably present in these cases." 2 A. Larson, *Workmen's Compensation Law*, § 63.51, p. 11-163 (1981).

Petitioner has failed to demonstrate that the classification set forth in A.R.S. § 23-1046(C) has no rational relationship to a permissible state objective. *See McGeorge v. City of Phoenix*, 117 Ariz. 272, 572 P.2d 100 (App. 1977); *Riley v. Stoves*, 22 Ariz. App. 223, 526 P.2d 747 (1974). We therefore conclude that the non-resident alien provision of the Workmen's Compensation Act serves a legitimate state interest and does not violate the equal protection clause.

Petitioner next argues that she has a property interest in the widow's benefits provided by the Arizona workmen's compensation law which cannot be denied her without due process of law. We need not address petitioner's property interest claim, however, because we have reviewed the record and find that, even if petitioner had been denied a

property interest, she was provided with an adequate opportunity to vindicate her factual and legal claims of entitlement to full death benefits. Procedural due process requires nothing more. *Board of Regents v. Roth*, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972).

For the reasons set forth, we find A.R.S. § 23-1046(C) is not unconstitutional and the award is affirmed.

DONALD F. FROEB, Judge

CONCURRING:

.....

WILLIAM E. EUBANK
Presiding Judge
Department C

.....

LEVI RAY HAIRE, Judge

In the Court of Appeals
State of Arizona

Division One

1 CA-IC 2417

DEPARTMENT C

ICA Claim No. 449-44-2966

ANDREA CISNEROS JALIFI, widow,
Petitioner,

vs.

THE INDUSTRIAL COMMISSION OF ARIZONA,
Respondent,

DAN SKOUSEN dba SKOUSEN RANCH and/or SKOUSEN FARMS,
Respondent Employer.

ORDER

The motion for rehearing and responses thereto were considered by the court, Presiding Judge William E. Eubank and Judges Donald F. Froeb and Levi Ray Haire participating.

IT IS ORDERED denying the motion.

DATED this 23rd day of April, 1982.

/s/ WILLIAM E. EUBANK
William E. Eubank, Presiding Judge
Department C

A true copy of the foregoing order was mailed this 23rd day of April, 1982, to:

Mr. Don F. Schaar
Taylor & Kamper
814 West Roosevelt
Phoenix, Arizona 85007
Attorneys for Petitioner

Mr. James A. Overholt
Acting Chief Counsel
The Industrial Commission of Arizona
1601 West Jefferson Street
Phoenix, Arizona 85007
Attorney for Respondent

April 23, 1982

1 CA-IC 2417

ICA CLAIM NO.
449-44-2966

NO INSURANCE

ORDER

Mr. Don A. Fendon
Jerome & Gibson
11 West Jefferson, Suite 710
Phoenix, Arizona 85003
Attorneys for Respondent Employer

Mr. Lawrence Ollason
182 North Court
Tucson, Arizona 85701
Co-Counsel for the petitioner

GLEN D. CLARK, Clerk
By
/s/ JOAN W. HOWARD
Deputy Clerk

[Seal]

Court of Appeals
State of Arizona

Division One

West Wing, State Capitol Building
1700 West Washington Street
Phoenix, Arizona 85007

April 29, 1982

Mr. S. Alan Cook, Clerk
Arizona Supreme Court
201 South West Wing, Capitol Building
Phoenix, Arizona 85007

Dear Sir:

RE: 1 CA-IC 2417
JALIFI v. SKOUSEN
ICA CLAIM NO. 449-44-2966

The Court's OPINION was filed on March 11, 1982.
The motion for rehearing was denied on April 23, 1982.
A timely petition for review was filed April 28, 1982. The record is transmitted to your Court as follows:

X Petition for Review (6)
X ORDER denying motion for rehearing (5)
X RESPONSE/OBJECTION to motion for rehearing (5)
X Motion for rehearing (5) Answering Brief ORIGINAL, Sets 1, 2, 3, 4 and 5
..... Briefs (Opening, Answering, Reply) (6 each)

X Original Clipboard
..... Instruments
..... Minute Entries
X Certified Claims File (one part)
..... Depositions (
..... Reporter's Transcript (
..... Exhibits (

GLEN D. CLARK, CLERK
By
/s/ MURIEL I. HUME
Deputy Clerk

Enclosures (as noted)
c: Mr. Donald F. Schaar
Mr. James A. Overholt, Acting Chief Counsel
The Industrial Commission of Arizona
Mr. Donald A. Fendon
Mr. Lawrence Ollason

[Seal]

Supreme Court
State of Arizona

201-West Wing
Capitol Building
(602) 255-4536
Phoenix 85007

May 12, 1982

Supreme Court
No. 16016-PR

Court of Appeals
No. 1 CA-IC 2417

Industrial Commission
No. 449-44-2966

ANDREA CISNEROS JALIFI, widow,
Petitioner,

vs.

THE INDUSTRIAL COMMISSION OF ARIZONA,
Respondent,

DAN SKOUSEN dba SKOUSEN RANCH and/or SKOUSEN FARMS,
Respondent Employer.

The following action was taken by the Supreme Court of the State of Arizona on May 11, 1982 in regard to the above-entitled cause:

"ORDERED: Petition for Review—DENIED."

Justice James Duke Cameron voted to grant.

Justice Stanley G. Feldman did not participate in the determination of this matter.

Record returned to the Court of Appeals, Division One, Phoenix, this 12th day of May, 1982.

S. ALAN COOK, Clerk
/s/ By REBECCA SANCHEZ
Deputy Clerk

TO:

Lawrence Ollason, Esq., 182 North Court, Tucson, Arizona 85701

Don F. Schaar, Esq. and J. Terence Fox, Esq., Taylor & Kamper, Suite Three, 3308 North Third Avenue, Phoenix, Arizona 85013

James A. Overholt, Acting Chief Counsel, Industrial Commission of Arizona, 1601 West Jefferson Street, Phoenix, Arizona 85007

Donald H. Bayes, Admin. Law Judge, Industrial Commission of Arizona, 1601 West Jefferson Street, Phoenix, Arizona 85007

Don A. Fendon, Esq., Jerome & Gibson, Suite 710, 11 West Jefferson Street, Phoenix, Arizona 85003

Glen D. Clark, Clerk, Court of Appeals, Division One, State Capitol Building, West Wing, Phoenix, Arizona 85007

LAWRENCE OLLASON
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182 North Court
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Attorney for Petitioner

In The Supreme Court
of the State of Arizona

Supreme Court
No. 16016-PR

Court of Appeals
No. 1 CA-IC 2417

Industrial Commission
No. 449-44-2966

ANDREA CISNEROS JALIFI, widow,
Petitioner,

vs.

THE INDUSTRIAL COMMISSION OF ARIZONA,
Respondent,

DAN SKOUSEN dba SKOUSEN RANCH and/or SKOUSEN FARMS,
Respondent Employer.

NOTICE OF APPEAL

PLEASE TAKE NOTICE that the above-named petitioner appeals to the United States Supreme Court, pursuant to 28 USC R57(2), from the order denying review imposed in the above-entitled case, entered by the Supreme Court of the State of Arizona on the 11th day of May, 1982,

on the grounds that said decision deprives petitioner equal protection of the law.

Petitioner herein designates the full written record of all proceedings involving the petitioner or her attorneys from the time of her initial application before the Industrial Commission to the filing of the notice of appeal.

Respectfully submitted this 21st day of July, 1982.

/s/ LAWRENCE OLLASON
Lawrence Ollason, Attorney
for Petitioner

Copy of the foregoing mailed this
21st day of July, 1982, to:

James A. Overholt, Acting Chief Counsel
The Industrial Commision of Arizona
P. O. Box 19070
Phoenix, Arizona 85005
Attorney for Respondent

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Phoenix, Arizona 85003
Attorney for Respondent Employer

Glen D. Clark, Clerk
Court of Appeals, Division One
State Capitol, West Wing
Phoenix, Arizona 85007

LAWRENCE OLLASON
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(602) 624-4477

Attorney for Petitioner

In the Court of Appeals
State of Arizona

Division One

1 CA-IC 2417

DEPARTMENT C

ICA Claim No. 449-44-2966

ANDREA CISNEROS JALIFI, widow,
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vs.

THE INDUSTRIAL COMMISSION OF ARIZONA,
Respondent,

DAN SKOUSEN dba SKOUSEN RANCH and/or SKOUSEN FARMS,
Respondent Employer.

AMENDED NOTICE OF APPEAL

PLEASE TAKE NOTICE that Andrea Cisneros Jalifi, the above-named petitioner, appeals to the Supreme Court of the United States from the final order denying review imposed in the above-entitled case, entered by the Supreme Court of the State of Arizona on the 11th day of May, 1982.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).
Respectfully submitted this 26th day of July, 1982.

/s/ LAWRENCE OLLASON
LAWRENCE OLLASON,
Attorney for Petitioner

Copy of the foregoing mailed this 26th day
of July, 1982, to:

James A. Overholt, Acting Chief Counsel
The Industrial Commission of Arizona
P. O. Box 19070
Phoenix, Arizona 85005
Attorney for Respondent

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